

906 KAR 1:160. Monitoring system for products containing ephedrine, pseudoephedrine, or phenylpropanolamine.

RELATES TO: KRS 15.380, 218A.1446, 218A.240

STATUTORY AUTHORITY: KRS 218A.1446, 218A.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.1446 authorizes the Cabinet for Health and Family Services and the Office of Drug Control Policy to establish an electronic recordkeeping mechanism for monitoring the sale of any nonprescription compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers. KRS 218A.250 authorizes the cabinet to promulgate administrative regulations to carry out the provisions of KRS Chapter 218A. This administrative regulation establishes the Kentucky Electronic Methamphetamine Precursor Tracking (KEMPT) system.

Section 1. Definitions. (1) "Attempted purchase" means information regarding a transaction is entered into the KEMPT system by a dispenser of a precursor to methamphetamine and the sale is not completed because the system recommends that the transaction be denied pursuant to KRS 218A.1446(5) or (6).

(2) "Cabinet" is defined by KRS 218A.010(3).

(3) "Dispenser of a precursor to methamphetamine" means a registered pharmacist, pharmacy intern, or pharmacy technician who lawfully sells a nonprescription compound, mixture, or preparation containing a detectable quantity of ephedrine, pseudoephedrine, phenylpropanolamine, their salts or optical isomers, or salts of optical isomers.

(4) "Kentucky Electronic Methamphetamine Precursor Tracking" or "KEMPT" means the electronic recordkeeping mechanism used by the Office of Drug Control Policy to monitor the sale of a nonprescription compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers.

(5) "Law enforcement officer" means a:

(a) Drug enforcement agent designated by the Cabinet for Health and Family Services pursuant to KRS 218A.240(2);

(b) Kentucky peace officer certified pursuant to KRS 15.380 as a:

1. Kentucky State Police officer;
2. City, county, or urban-county police officer;
3. Deputy sheriff; or

4. State or public university safety and security officer;

(c) Certified or full-time peace officer of another state; or

(d) Federal peace officer.

(6) "ODCP" means the Office of Drug Control Policy within the Kentucky Justice and Public Safety Cabinet.

(7) "Precursor to methamphetamine" means a nonprescription compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers.

(8) "Purchaser" means an individual age eighteen (18) or older who purchases, or attempts to purchase, a nonprescription compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers.

Section 2. Electronic Reporting. (1) The following information shall be entered in the KEMPT

system upon the purchase, or attempted purchase, of a precursor to methamphetamine:

(a) Date of transaction pursuant to KRS 218A.1446(2)(b), which is entered manually or recorded automatically by KEMPT;

(b) Identifying information regarding the purchaser pursuant to KRS 218A.1446(2)(b) and a government-issued photo identification number; and

(c) Amount and name of the product dispensed pursuant to KRS 218A.1446(2)(b).

(2) The ODCP shall be solely responsible for the security of the transaction information required by subsection (1) of this section after a dispenser of a precursor to methamphetamine transmits the information.

(3) The ODCP shall provide a toll-free telephone number:

(a) For technical support available to a dispenser of a precursor to methamphetamine twenty-four (24) hours per day, seven (7) days per week; and

(b) For customer service available to a purchaser who has an inquiry regarding a transaction, Monday through Friday, 8 a.m. to 4:30 p.m., except for state recognized holidays.

(4) A pharmacy may use a hardcopy signature logbook consisting of each purchaser's signature and transaction number to meet the requirement for obtaining electronic signatures.

Section 3. Extension for Reporting Information and Exemption from Electronic Reporting. (1) If a dispenser of a precursor to methamphetamine experiences mechanical or electronic failure, the ODCP shall grant an extension for reporting the information required by Section 2(1) of this administrative regulation.

(2) To request an extension for reporting information required by Section 2(1) of this administrative regulation, a dispenser of a precursor to methamphetamine shall submit a request to the ODCP that:

(a) States the reason for the request;

(b) Identifies the period of time for which the extension is necessary, not to exceed seventy-two (72) hours; and

(c) Is submitted:

1. Within twenty-four (24) hours of discovery of the circumstances resulting in the need for an extension request; or

2. On the day following a holiday or weekend if the discovery occurs on a day that ODCP offices are closed.

(3) If a transaction occurs during the time period in which a request described in subsection (2) of this section is pending, a dispenser of a precursor to methamphetamine shall:

(a) Maintain a written log or electronic recordkeeping mechanism approved pursuant to KRS 218A.1446(2)(b) of the information required by Section 2(1) of this administrative regulation; and

(b) Enter the information in the KEMPT system within seventy-two (72) hours of the system becoming operational.

(4) The ODCP shall acknowledge receipt of a request described in subsection (2) of this section within:

(a) Twenty-four (24) hours of receipt; or

(b) On the day following a holiday or weekend if ODCP offices are closed.

Section 4. Request for KEMPT Reports. (1) The ODCP shall provide a KEMPT report:

(a) To a law enforcement officer whose duty is to enforce the laws of this state, another state, or of the United States relating to drugs;

(b) To a pharmacy;

(c) Pursuant to a subpoena issued by a grand jury; or

- (d) Pursuant to a court order issued by a criminal court.
- (2) The ODCP shall not provide a KEMPT report to a person or entity that is not authorized in accordance with subsection (1) of this section to receive the report.
- (3) A KEMPT report provided to a pharmacy shall not identify the dispenser of a precursor to methamphetamine or the dispensing pharmacy.

Section 5. Denial of Transactions and Overrides. (1) If an individual attempts to purchase a precursor to methamphetamine in violation of the thirty (30) day or one (1) year restrictions established by KRS 218A.1446(5), or the age restriction established by KRS 218A.1446(6), the KEMPT system shall:

- (a) Notify the pharmacy at the time of sale; and
- (b) Recommend that the pharmacy deny the transaction.
- (2) The KEMPT system shall provide an override feature for use by a dispenser of a precursor of methamphetamine to allow completion of the sale.

Section 6. Compliance Date. All pharmacies that dispense precursors to methamphetamine shall:

- (1) Comply with the electronic reporting requirements of Section 2 of this administration regulation within (30) days of the date that a pharmacy has access to KEMPT; or
- (2) Submit a request to ODCP for an extension if the pharmacy is not able to comply with the electronic reporting requirements on the date the pharmacy has access to KEMPT. (34 Ky.R. 687; Am. 1509; 1753; eff. 2-1-2008; 35 Ky.R. 1322; eff. 2-6-09; 39 Ky.R. 335; 771; eff. 10-17-12.)